IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7653 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARTIYA MAZDOOR SANGH
Versus
BLA INDUSTRIES LTD & ANOTHER

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Appearance :
MR TR MISHRA for Petitioner(s) : 1,
M/S TRIVEDI & GUPTA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/06/2007

ORAL JUDGMENT

Mr. T.R. Mishra, learned counsel for the petitioner.

Shri K.M. Thakkar, learned counsel for respondent No.1.

None for respondent No.2, though served.

The petitioner, being aggrieved by the order dated 16.02.98 passed below applications, Exhibits 5, 6 and 9 in Reference [ITR] No. 103 of 1997 by the Industrial Tribunal No.2, Rajkot has filed this petition under Article 227 of the Constitution of India.

Short facts necessary for disposal of the present writ application are that the respondent No.1 BLA Industries Limited, made an application under section 25N (2) of the Industrial Disputes Act, 1947 [the Act, for short] seeking permission to retrench as many as 55 persons on the ground that as the cost of production has gone up and the Company is unable to meet both the ends, they be allowed to retrench those persons. Notices were issued to all such workers and ultimately by order dated 07.06.97, the specified authority under the Act allowed the application under section 25N (3) of the Act and permitted the Company/employer to retrench such persons.

Being aggrieved by the permission accorded by the

Industrial Tribunal, the Trade Union made an application under section 25N (6) of the Act and sought review of the order passed by the Industrial Tribunal. Under the provisions of section 25N (6), the authority itself could have reviewed the order but exercising the options given to it under the provisions of law, it made a Reference to Industrial Tribunal No.2. After receiving the said Reference, the Industrial Tribunal proceeded with the matter. During the pendency of the Reference, the present petitioner preferred applications, Exh.5, Exh.6 and Exh.9, seeking production of certain documents and examination of a witness to prove that in almost similar situations, the other Company was earning profits and the present Company/employer had made false statements in the earlier proceedings. The said applications were opposed tooth and nail and after hearing the parties, learned Industrial Tribunal No. 2, vide its impugned order dated 16.02.98 rejected all the three applications.

Shri Mishra, learned counsel for the petitioner submitted that perusal of sub-section (6) of section 25N of the Act clearly shows that the appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant

permission under sub-section (3) of section 25N. His submission is that in case the review is not to be decided by appropriate government or the specified authority, then it can refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication. He submits that even if the scope of Reference made under sub-section (6) of section 25N is taken to be limited, though it is not, with the aid and assistance of Order 1 Rule 47, CPC, the present petitioner would be entitled to summon and/or produce records to show that the earlier order passed by the Industrial Tribunal granting permission under section 25N (3) was illegal. His submission is that when a Reference is made under section 25N (6), then the entire matter is to be tried as an application and the parties would be entitled to lead evidence in the matter.

Shri K.M. Thakkar, learned counsel for respondent No.1, on the other hand submits that scope of the review is very limited, and in the review application, neither an inquiry can be made nor additional evidence can be produced. His submission is that either the appropriate government or specified authority or the concerned Tribunal exercising the power of review would not be entitled to accept any additional evidence, either oral

or documentary, and they will have to decide the matter on the strength of the material which was available on the records when the application was earlier disposed of finally. His submission is that in accordance with permission accorded by the Industrial Tribunal if the Company retrenches any employee, then such employee would be entitled to make a reference under section 10 of the Act and the Labour Court would have the fullest jurisdiction. He also submits that the employee of the other Company cannot be examined to prove that the other Company is making profits.

So far as examination of an employee of the other Company is concerned, I must agree with Mr. Thakkar because making of profit by one Company and loss suffered by another Company would stand on a different footing. A Company may have better management, its employees may be working properly and they are working in conducive conditions. Under the circumstance, unequals cannot be treated equally and an employee from the other Company would not be able to say or show as to why the present respondent-Company was making loss. The rejection of the said prayer is certainly justified.

So far as the argument regarding the retrenchment

and consequential application/Reference under section 10 of the Act is concerned, I had asked Mr. Thakkar to make a clear statement that whether the order passed under section 25N (3) of the Act would operate as *res judicata* or not? Firstly Mr. Thakkar contended that the order granting permission to retrench would not operate as *res judicata*, but realising the fallacy of the argument after going through section 11 of the Code of Civil Procedure, he submitted that the order passed under section 25N (3) would operate between the parties and would be *res-judicata*. Changing his stance and stand, he submits that in furtherance of the permission if somebody is retrenched, then at least the validity of the retrenchment order can be examined by the Labour Court or Tribunal. I had asked Mr. Thakkar that in a given case if every legal provision is followed and if in execution or furtherance of such order somebody is retrenched, what shall be the legal position? Mr. Thakkar fairly conceded that such an employee would have no armory and would not be in a position to attack upon order of retrenchment. If the argument of Mr. Thakkar is accepted that the order would not have any effect of *res judicata*, then the provisions contained in sub-section (6) of section 25N would become nugatory because every employee affected by the order of retrenchment, after retrenchment

would challenge the validity of the permission.

In the opinion of this Court, this is not the scheme of the Act. The scheme of the Act is that in a given set of circumstances, if a particular employer comes to the Tribunal, makes an application under section 25N (2) of the Act, then on being satisfied, the Labour Court / Industrial Tribunal would be entitled to grant permission to retrench. The permission would always be final between the parties and would operate as *res judicata*.

Section 25N of the Act reads as under:

> "25N. **Conditions precedent to retrenchment of workman –**
> (1). No workman employed in any industrial establishment to which this chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -
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> (a). the workman has been three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
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> (b). the prior permission of the appropriate

government or such authority as may be specified by that government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2). An application for permission under sub-section shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3). Where an application for permission under sub-section (1) has been made, the appropriate government or the specified authority, after making such inquiry as it things fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy or the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

(4). Where an application for permission has been made under sub-section (1) and the appropriate government or the specified authority does not communicate the order granting or refusing to grant

permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5). An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6). The appropriate government or the specified authority may, either on its own motion, or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal, for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7). Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force

as if no notice had been given to him.

(8). Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9). Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under his section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months."

The appropriate government or the specified authority may review the order granting or refusing to grant permission either on its own motion or on the application made by either side. If they do not propose to do so, they would be entitled to refer the matter to the Tribunal for adjudication. Sub-section (6) does not say that if the appropriate government or specified

authority refers the matter for adjudication, then such adjudication would be within the narrow compass of review. Sub-section (6) simply says that the review can be made by appropriate government or specified authority and in the alternative, the matter may be referred to a Tribunal for adjudication. Reference is to be made to the Tribunal for adjudication and not for review. If the legislature wanted that the appropriate government or the specified authority refer the matter to the Tribunal for its review, then instead of using the word 'adjudication', the legislature should have used the word 'review'. Scheme of sub-section (6) of section 25N would clearly show that option is given to the appropriate government and/or specified authority to review the matter or in a given case where the appropriate government or specified authority do not think that review would be apt or appropriate, then the appropriate government or specified authority may refer the matter to a Tribunal for adjudication. Once the matter is referred to a Tribunal for adjudication, then the powers of such Tribunal would not be power to review only, but the entire matter would be open before such Tribunal. Once this view is accepted, then the Tribunal has to give appropriate opportunity to the parties to lead evidence, produce documents, and summon witnesses

for production of the documents. If this view is not accepted and it is held that the Tribunal would only be entitled to review the earlier order, that would lead to many problems. The learned Industrial Tribunal, in the opinion of this Court, erred in not appreciating the legal provisions and further erred in holding that in a review application, additional material cannot be brought on record. Order 47 Rule 1 provides that any person aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, by a decree or order from which no appeal is allowed, or by a decision on a reference from a Court of Small Causes and who, from the discovery of new and important matter or evidence, which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of the judgment to the Court which passed the decree or made the order. Provisions of Rule 1 of Order 47 may not apply *mutatis mutandis* but the principles of law would certainly be applicable. A review application can always be made to the Court saying that the order passed by the said Court

suffers from an error apparent on the face of the record or certain material which would have important bearing on the subject could not be produced before the said Court because such material was not within the knowledge of the party or despite due diligence the party could not obtain the said evidence. They can always satisfy the Court by pleading that there does exist sufficient reason to recall the earlier order. If in a review such evidence can be adduced to satisfy the Court that such material would have important bearing on the judgment and subject, then every Court would be obliged to take such evidence on record and there cannot be a dogmatic approach saying that no fresh evidence would be allowed and the earlier order would be considered on the evidence which is available on the record.

In the present case, the present petitioner has submitted two more applications praying that the Company be asked to produce certain documents and some Clerk or officer from the office of the Commissioner of Labour be asked to appear in the Court with records relating to grant of permission/licence under the provisions of the Contract Labour [Regulation & Abolition] Act.

If such evidence is allowed to be brought on the

record and the petitioner is given an opportunity to show that the earlier order is patently illegal because of non-consideration of such evidence, then naturally the Tribunal would be entitled to recall the earlier order, relegate the parties to their original position and proceed to decide the application filed under section 25N (2) of the Act. Recalling the order of permission does not mean rejection of the application filed under section 25N (2) of the Act.

If I hold that the Reference Court would be entitled to examine the entire matter afresh and the scope of reference and the jurisdiction to be exercised by the Reference Court would be much larger than that of a review court, then consequently I must hold that the petitioner's applications to summon the record either from the Company or from the office of the Labour Commissioner cannot be rejected. Agreeing with the submission of Mr. Thakkar if I hold that powers of the Industrial Tribunal would only be of a review Court, then in view of the above discussions, the present petitioner must be given an opportunity to produce all relevant records to show that the earlier order is patently illegal because of non-consideration of such evidence and there does exist sufficient reasons to recall the earlier

order. On either count, the petition must be allowed. The order passed by the Industrial Tribunal so far as it rejects the prayer to summon witness of other Company is concerned, the same is maintained, but the other part of the order is set aside and it is directed that the petitioner would be entitled to summon the records from the respondent Company so also from the office of the Labour Commissioner.

The petition is allowed with costs, which is quantified at Rs.5000/- [Rupees five thousand only] – to be paid by the Company to the petitioner.

[R.S.GARG, J.]

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